

**Internal Revenue Service
Director, Exempt Organizations**

**Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201**

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:

PHONE

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the State of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

[REDACTED]

Director, Exempt Organizations

Enclosures: 2

ENCLOSURE I

Issues

You are not operated exclusively for 501(c)(3) purposes for the following reasons:

- a. Your bylaws indicate the following:
 1. "The president may remove any board member at will. No cause is required. However, the decision must be ratified by a majority of the remaining board members."
 2. "[REDACTED] shall remain the president, unless he succumbs, resigns, or appoints another".
 3. "The president shall appoint or re-appoint all officers. However, the decision must be ratified by a majority of the remaining board members."
 4. "The president may remove any officer at will, whenever it appears that such removal would be in the best interest of the corporation. However, the decision must be ratified by a majority of the remaining board members".

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it. The substantial control exhibited by [REDACTED] over the organization appears to cause the applicant to serve private and not public interests.

- b. The three children of [REDACTED] will remain living with them while they are minors. A home school will be operated out of the first home where [REDACTED] and their three children will reside. There are no restrictions regarding the other proposed homes that will limit the possible inurement to parents of children who will essentially be paid to care for their own children. The homes will be located in a rural part of the state so the families can maintain a functioning farm that will provide food for the family and education to the students

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax, organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Better Business Bureau of Washington, DC v United States of America 326 U.S. 279; 66 S. Ct. 112; 90 L. Ed. 67; 1945 U.S. LEXIS 2735; 34 A.F.T.R. (P-H) 5; 1945 C.B. 375 held, the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under IRC 501(c)(3). Regardless of the other religious, charitable, or educational aspects of the organization, the benefits derived by [REDACTED], or future parents, by having their own children live with them in housing provided by the exempt organization, receiving compensation for educating their own children, and receiving other various living expenses (such as food and utilities) from the exempt organization appear to cause inurement to [REDACTED]

- c. Your organization will be involved in three activities until you begin your proposed operations some unspecified time in the future; (1) raising funds, (2) networking with juvenile justice and child welfare officials, and (3) providing information to troubled youth through churches and other groups. Therefore, there are not any current 501(c)(3)

[REDACTED]

activities and your organization will not meet the operational test under section 501(c)(3) of the Code

Facts

The information submitted with your application indicates you were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Article III of your Articles of Incorporation states the corporation is organized exclusively for educational, charitable, and religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Article VI indicates your organization does not have a membership and the board of directors shall manage all internal affairs of the organization.

Article III of your Constitution states your purposes are to encourage and promote the worship of God, the raising of children in a Christian environment, the Christian education of our children, the edification of believers, and a return of holiness and commitment to God.

Article III (A), section 6 of the Bylaws states "the president may remove any board member at will. No cause is required. However, the decision must be ratified by a majority of the remaining board members."

Article III (B), section 2 of the Bylaws indicates that "[REDACTED] shall remain the president, unless he succumbs, resigns, or appoints another".

Article III (B), section 4 of the Bylaws indicates the "president shall appoint or re-appoint all officers. However, the decision must be ratified by a majority of the remaining board members."

Article III (B), section 5 of the Bylaws states the "president may remove any officer at will, whenever it appears that such removal would be in the best interest of the corporation. However, the decision must be ratified by a majority of the remaining board members".

Your response dated [REDACTED] indicates your organization will spend [REDACTED] % of it's time conducting long term Christian foster care, [REDACTED] % Christian training, education and home skills, [REDACTED] % academic tutoring and evaluation, and [REDACTED] % rural and farm life skills training. The students selected to participate in your program will be recommended by those within the juvenile court system, pastors and counselors of various church organizations and by parents or guardians of the students. Participants in the program will not be required to pay a fee.

Your response dated [REDACTED] provides a description of your four main activities. Your primary activity will be to provide a place for disadvantaged youth to live and learn life skills in a Christian based home. Each home will have a set of Christian house parents who will be tasked with providing meals, supervision of daily family chores, and transportation to health care providers, school, and other planned activities. Residents will be required to stay a minimum of one year. Each home will have no more than 6 children and 2 house parents in residence at one time.

Your [REDACTED] response further indicates the organization will also require each youth in the program to participate in a structured Bible study program, each house parent will be trained on and utilize a structured system for tutoring and teaching individual study skills, the homes will be located in a rural part of the state so the family can maintain a functioning farm that will provide food for the family and education to the students. Also, the operations of the organization will not begin until the time you have secured enough funding to purchase, set up, and operate the

[REDACTED]

ministry for one year. Furthermore, property purchased for use by the ministry will be held in the name of the exempt organization.

Your board has been expanded to include 5 members, [REDACTED] and [REDACTED]. Only two members are related parties, [REDACTED] and [REDACTED].

Your response dated [REDACTED] indicates your three children, ages 14, 16 and 17 will remain living with you while they are minors. A home school will be operated out of the first home where [REDACTED], and their three children will reside. As the ministry grows a Christian school will be operated by [REDACTED] who is a state certified teacher.

Your response dated [REDACTED] indicates your organization will be involved in three activities until you open it's first mission ranch; (1) raising funds, (2) networking with juvenile justice and child welfare officials, and (3) provide information to troubled youth through churches and other groups.

Revenue for your organization will be derived from private foundation grants, corporate and individual donors, and Christian church donations and offerings. Expenses are for Salaries, occupancy, and facility purchases.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax, organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states: In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it. Thus to meet this requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such interests.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations defines the term "educational" as the instruction or training of the individual for the purpose of improving or developing his capabilities.

[REDACTED]

Better Business Bureau of Washington, DC v United States of America 326 U.S. 279; 66 S. Ct. 112; 90 L. Ed. 67; 1945 U.S. LEXIS 2735, 34 A.F.T.R. (P-H) 5; 1945 C.B. 375 held, the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under IRC 501(c)(3).

Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), aff'd by unpublished order (7th Cir. 1980), cert. denied, March 9, 1981. The organization's primary activity was the passive investment of funds derived primarily from its founder who, along with members of his family, controlled the organization. The organization stated that it was attempting to accumulate \$500,000 in order to erect a church building. Meanwhile, it engaged in no religious activities. Held, the organization was not operated exclusively for exempt purposes and it failed to establish that no part of its net earnings inured to the benefit of private individuals.

Wendy L. Parker Rehabilitation Foundation, Inc. vs. Commissioner Of Internal Revenue, Docket No. 855-85X T.C. Memo 1986-348; 1986 Tax Ct. Memo LEXIS 272; 52 T.C.M. (CCH) 51; T.C.M. (RIA) 86348 August 4, 1986. The organization's activity is to aid victims of coma, resulting from motor vehicular accidents, strokes, drowning, and other related causes; to provide such victims with funds and therapeutic equipment and devices used in conjunction with accepted coma recovery programs; to run fund raising affairs and social functions in aid of coma victims; to exchange and disseminate information concerning the care and treatment of coma victims in all stages of recovery. Wendy Parker is a beneficiary of the organization and the daughter of the founders. The court held that the distribution of funds for the benefit of Wendy Parker assists the Parker family in providing for her care. This relieves the Parker family of the economic burden of providing such care. This court case upheld that the Wendy L. Parker Rehabilitation Foundation, Inc. failed to meet the standards for tax exemption.

Henry O. Havemeyer v. Commissioner, 36 B.T.A. 859, held that an organization which was making distributions exclusively to Mr. Havemeyer and members of his family as salaries and other forms of payment did not qualify for tax exemption under section 23(n) (2) of the Revenue Act of 1932. The organization was formed by Mr. Havemeyer, members of his family, and a close business associate. Mr. Havemeyer and members of his family made the contributions to the organization. All distributions made by the organization served the private interests of Mr. Havemeyer and members of his family.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973).

Application of Law

In order to qualify as a 501(c)(3) organization, the organization must be operated and organized exclusively for charitable, religious, or educational reasons.

Your organization has not complied with Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations that states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. [REDACTED] substantial control over the organization indicates you are operated for the benefit of designated individuals or the persons who created it.

The fact that the founders of the organization, [REDACTED] and their children will live in the facility causes net earnings to inure to designated individuals. Since the [REDACTED] are

[REDACTED]

being relieved of the burden of providing food, shelter, and other economic burdens of parents for their children by living in a facility completely provided for by the organization, your organization is not "operated exclusively" for one or more exempt purposes and is precluded from exemption.

Your are similar to the organization in Wendy L. Parker Rehabilitation Foundation, Inc Vs. Commissioner of Internal Revenue, Docket No. 855-85X T.C. Memo 1986-348 where the court held that the distribution of funds for the benefit of Wendy Parker assists the Parker family in providing for her care. Like the organization in Wendy L. Parker Rehabilitation Foundation, Inc vs. Commissioner of Internal Revenue funds of your organization will be used to care for the founders and their 3 children who will be residing at the planned facility.

Like the organization in Better Business Bureau of Washington, DC v United States of America, the presence of a single non-exempt purpose, since it is substantial in nature, precludes your exemption under IRC 501(c)(3). The Hellers provision of care for their 3 children with funds from this organization is a substantial non-exempt purpose.

You are similar to the organization in Western Catholic Church v. Commissioner. That organization had no other 501(c)(3) activities other than raising funds to erect a church building and was denied exemption. Shiloah Mission Ranch has stated that the operations of the organization will not begin until enough funding is raised to purchase, set up, and operate the ministry for one year. Therefore, your current activities are not primarily 501(c)(3) activities and exemption is precluded.

Your organization is similar to the organization described in Henry O. Havemeyer v. Commissioner because your organization will primarily serve the private interests of the Heller family by providing them a residence, salary, food, and other items in exchange for educating and taking care of their own children.

The substantial benefits that flow to the Heller family from your organization cause your organization to be operated for the benefit of private parties and thus constitutes a substantial nonexempt purpose similar to the organization in Old Dominion Box Co. v. United States.

Applicant's Position

You have stated the following positions:

- a. You are organized and operated exclusively for charitable, religious, and educational purposes. Your main mission is to provide home care, academic tutorial assistance, and character education through the involvement of the students in a Christian family home, life, and atmosphere. You believe this is not inurement because this involves the whole family concept with siblings to interact with. Furthermore, any house parents who have their own children will benefit the students enrolled in the program by providing the necessary sibling interaction.
- b. You indicate that the creators of the organization will not benefit in any way other than reasonable compensation for their services.
- c. You give four examples of organizations that provide youth services and housing for their on-site staff. Specifically, in the summer of [REDACTED], [REDACTED] worked on the [REDACTED] [REDACTED] was a teacher and [REDACTED] was a cook. The [REDACTED] provided a small

- amount of compensation, a residence for their entire family of five, food, access to community facilities, and paid all utilities.
- d. You stated you couldn't find where the Federal Government has any jurisdiction on the home schooling activities in [REDACTED]
 - e. You state you see no conflict with Regulation 501(c)(3)-1(d)(1)(ii) because [REDACTED] will not profit from the organization and have a mandate from God to work with disadvantage youth.
 - f. You stated Wendy L. Parker vs. Commissioner is not relevant to your organization. You stated there is not inurement to you and that any benefits to interested parties are only part of their fair and reasonable compensation package.
 - g. A letter sent by your organization to Congressman [REDACTED] indicates your goal is to provide relief to some underprivileged youth, combat juvenile delinquency, and lessen the burdens of government. As a Christian organization, you want to help youth become good citizens and productive members of society.

Service Response to Applicant's Position

Based on the information submitted, it is our position that your organization is neither organized nor operated exclusively for 501(c)(3) purposes and as a result, tax exemption under section 501(c)(3) is precluded.

While your organization clearly has activities that serve charitable, educational and religious purposes it has substantial non-exempt activities that preclude exemption.

Firstly, the substantial control exhibited by [REDACTED] over the organization causes your organization to serve private interests to a substantial degree. This does not imply that your organization is not primarily serving public purposes. Better Business Bureau of Washington, DC v United States of America held that the presence of a single non-exempt purpose, if substantial in nature, would preclude exemption under IRC 501(c)(3). Furthermore, Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. The fact that [REDACTED] can remove board members and officers, appoints all officers, and is appointed for life causes your organization to have a single non-exempt purpose that serves private interests, specifically, benefiting [REDACTED] and his family.

Secondly, assets of the organization are inuring to the [REDACTED] family. Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax, organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Again, Better Business Bureau of Washington, held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under IRC 501(c)(3). Regardless of the other religious, charitable, or educational aspects of the organization, the benefits derived by [REDACTED] or future parents, by having their own children live with them in housing provided by the exempt organization, receiving compensation for educating their own children, and receiving other various living expenses (such as food and utilities) from the exempt organization causes inurement to [REDACTED] and the organization to serve a substantial non-exempt purpose.

Thirdly, your organization will be involved in three activities until you begin your proposed operations some unspecified time in the future; (1) raising funds, (2) networking with juvenile justice and child welfare officials, and (3) providing information to troubled youth through

churches and other groups. Section 1.501(c)(3)-1(a)(1) of the Regulations states: In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt. While providing information may be educational in nature, raising funds and networking are typically not charitable activities. Therefore, your organization does not meet the operational test under section 501(c)(3) of the Code.

Following are rebuttals to the above applicant positions:

- a. While your organization may have some charitable, religious and educational purposes it is clear that your organization has a substantial non-exempt purpose that serves the private interests of the founders, the [REDACTED] family.
- b. The creators, the Heller family, benefit because they are relieved of the burden of providing food, shelter, and other economic burdens of parents for their children by living in a facility completely provided for by the organization.
- c. In the example of the [REDACTED] provided by your organization there are significant differences. Mr. [REDACTED] did not substantially control the [REDACTED] were hired as [REDACTED] employees and given a compensation package that included low compensation and paid living expenses. Your organization has been created by the [REDACTED] to help disadvantaged children but a substantial part of your activity will involve the [REDACTED] teaching and raising their own children and being compensated by the exempt organization. Also, there are no prohibitions against similar arrangements being made by other families with your organization in the future.
- d. If home schooling is provided by your organization as part of its activities the schooling needs to be examined to determine its effect on your exempt status.
- e. The Service does not question the applicant's mandate from God. But, clearly, as mentioned previously in (b) above, the [REDACTED] will privately benefit from the activities of the organization.
- f. You are similar to the organization in Wendy L. Parker Rehabilitation Foundation, Inc vs. Commissioner of Internal Revenue. Like the organization in Wendy L. Parker Rehabilitation Foundation, Inc vs. Commissioner of Internal Revenue funds of your organization will be used to care for the founders and their 3 children who will be residing at the planned facility.
- g. Again, while your organization may have substantial charitable, religious and educational purposes it is clear that your organization has a substantial non-exempt purpose that serves the private interests of the founders, the [REDACTED] family.

Conclusion

Based on the facts presented above, we hold that your organization does not meet the requirements for tax exemption under section 501(c)(3) of the Code.

The substantial control of the organization by [REDACTED], the inurement to the [REDACTED] family, and the failure of the operational test cause your organization fail the requirements for tax exemption under section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code because you do not meet the proscriptions in sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date